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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,485	05/23/2001	Craig L. Johnson	16635-104	9336

31278 7590 10/23/2003

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EXAMINER
KIM, SUN U

ART UNIT	PAPER NUMBER
1723	

DATE MAILED: 10/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/863,485	JOHNSON, CRAIG L.	
	Examiner	Art Unit	
	John Kim	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-14 is/are pending in the application.
- 4a) Of the above claim(s) 10-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 5) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>082903</u> . | 6) <input type="checkbox"/> Other: |

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/29/03 has been entered.

2. The information disclosure statement filed 8/29/03 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. WO 95/13837 and WO 95/14142 are missing and not of record in the parent application.

3. Claims 10-14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in the amendment filed on 4/26/02.

4. Claim 6 is rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,695,489 (hereinafter referred to as Japuntich). Japuntich teaches a flexible blood bag (12) comprising a port (14) on one side and a port (16) on opposite side and an integral coarse filter comprising a tube of plastic mesh (62) having a closed bottom end by filtering sheet (34) and extending from the port (16) into the bag (12) (see figures 1-2, 7; col. 3, line 46 - col. 7, line 25). Recitation of "bag or reservoir for recirculation washing of blood cells" and "a less dense suspension of blood cells is withdrawn through said top outlet port for further processing" are an intended use of the apparatus; therefore, such recitation is not given a patentable weight to the

structural limitation since the flexible blood bag of Japuntich meets all of the structural elements claimed. Furthermore, ports designated as inlet or outlet is an intended use of a port.

5. Claims 7 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,443,220 (hereinafter referred to as Hauer et al). Hauer et al teach a pliable blood bag (14) comprising a port (28) on one side and a port (26) on the opposite side and a tube (32) extending into the bag from the port (28) to remove air (see figure 2; col. 2, line 25 - col. 4, line 15).

Recitation of "bag or reservoir for recirculation washing of blood cells" is an intended use of the apparatus; therefore, such recitation is not given a patentable weight to the structural limitation since the flexible blood bag of Hauer et al meets all of the structural elements claimed.

Furthermore, ports designated as inlet or outlet is an intended use of a port.

6. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japuntich in view of Hauer et al. Japuntich teaches a flexible blood bag including an integral coarse filter comprising a tube of plastic mesh as described in above paragraph 4. Claims 8-9 essentially differ from the blood bag of Japuntich in reciting a bubble trap at the top comprising plastic tubing extending from the top port into the bag inside the mesh tube. Hauer et al teach a pliable blood bag (14) comprising a top port (28) and a tube (32) extending from the top port (28) into the bag inside a screen filter (38) to remove air (see figure 2; col. 2, line 25 - col. 4, line 15). It would have been obvious to a person of ordinary skill in the art to modify the blood bag of Japuntich to incorporate a tube extending from the top port into the bag of Japuntich inside a mesh filter to remove air as suggested by Hauer et al. Please note that recitation of "bag or reservoir for recirculation washing of blood cells" and "a less dense suspension of blood cells is

withdrawn through said top outlet port for further processing" are intended use of the apparatus; therefore, such recitation is not given a patentable weight to the structural limitation.

7. Applicant's arguments filed 8/29/03 have been fully considered but they are not persuasive. Applicant argue that neither Japuntich nor Hauer et al disclose or suggest a device having an inlet port located at the bottom of the bag/reservoir and an outlet port located at the top of the bag/reservoir. However, Japuntich or Hauer et al discloses ports opposite from each other and having filter or plastic tubing from one port. Use of ports in a flexible bag as an bottom inlet or an top outlet is an intended use of the apparatus and these claimed ports are not distinguishable from the ports that are opposite from each other in Japuntich or Hauer et al.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kim whose telephone number is (703) 308-2350. The examiner can normally be reached on weekdays from 7:00 AM - 3:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached on (703) 308-0457. The fax phone number for official response is (703) 872-9306.

When sending a draft amendment by fax, please mark the paper as "DRAFT"; otherwise, mark the paper "OFFICIAL". This will expedite the processing of the paper.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.

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John Kim
Primary Examiner
Art Unit 1723

J. Kim
October 16, 2003